IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10702 OF 2004

Bandu Ganapati Patil ...Petitioner

Versus

Pandu Ganapati Patil (deceased) through his L.rs. ...Respondents

.....

Mr. Amit Borkar, counsel for Petitioner

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CORAM: B. H. MARLAPALLE, J.

DATED: 31ST MARCH, 2005

P. C.:-

1. Heard Mr. Borkar, the learned counsel for the petitioner who is the plaintiff in R.C.S. No. 46 of 1996. On or about 29.11.2004 the plaintiff moved an application at Exh.84 for amendment of the suit on the plea that around the time when the suit was filed he was dispossessed of the suit land to the extent of four gunthas by the defendant. The said amendment application has been rejected by the learned C.J.J.D. at Radhanagri vide his order dated 30.11.2004 and hence, this petition.

2. The trial court noted that the recording of evidence in the suit was already in progress and after the defendant’s evidence was recorded, this

application at Exh.84 was brought for amendment on the basis of the depositions made by the defendant. The amendment application did not state as to when exactly the plaintiff was dispossessed and this knowledge must be with the plaintiff only, the amendment application cannot be moved on the basis of the statement made by the defendant in his oral depositions and more so when such statement amounted to the pleadings of the plaintiff. In any case if the plaintiff was dispossessed around the time when he had filed suit in 1996, no explanation was furnished as to why he waited for a long period of eight years. The plaintiff and the defendant are admittedly the members of a joint family and there was partition. The defendant got separated from the family in the year 1962 and whereas the plaintiff got separated in the year 1993 by way of compromise between his other two brothers. On the facts of this case, the reasoning given by the trial court in rejecting the amendment application cannot be faulted with.

3. Hence, the petition is rejected summarily.